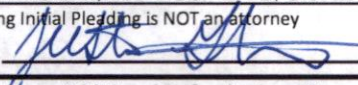


COMPOSITE EXHIBIT 1

COVER SHEET Civil Case Filing Form (To be completed by Attorney/Party Prior to Filing of Pleading)		Court Identification Docket #		Case Year	Docket Number
		<div style="border: 1px solid black; padding: 2px;">30</div> County #	<div style="border: 1px solid black; padding: 2px;">01</div> Judicial District (CH, CI, CO)	<div style="border: 1px solid black; padding: 2px;">2019</div>	<div style="border: 1px solid black; padding: 2px;">00051</div>
		<div style="border: 1px solid black; padding: 2px;">03</div> Month	<div style="border: 1px solid black; padding: 2px;">22</div> Date	<div style="border: 1px solid black; padding: 2px;">19</div> Year	<div style="border: 1px solid black; padding: 2px;"></div> Local Docket ID
Mississippi Supreme Court Administrative Office of Courts		Form AOC/01 (Rev 2016)		Case Number if filed prior to 1/1/94	
In the <u>CIRCUIT</u>		Court of <u>JACKSON</u>		County - <u>FIRST</u>	Judicial District <u>9th</u>
Origin of Suit (Place an "X" in one box only)					
<input checked="" type="checkbox"/> Initial Filing <input type="checkbox"/> Reinstated <input type="checkbox"/> Foreign Judgment Enrolled <input type="checkbox"/> Transfer from Other court <input type="checkbox"/> Other <input type="checkbox"/> Remanded <input type="checkbox"/> Reopened <input type="checkbox"/> Joining Suit/Action <input type="checkbox"/> Appeal					
Plaintiff - Party(ies) Initially Bringing Suit Should Be Entered First - Enter Additional Plaintiffs on Separate Form					
Individual <u>Baria</u> <u>Barrett</u> Last Name First Name Maiden Name, if applicable M.I. Jr/Sr/III/IV					
___ Check (x) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: _____ Estate of _____					
___ Check (x) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: _____ D/B/A or Agency _____					
Business _____ Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated					
___ Check (x) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below: _____ D/B/A _____					
Address of Plaintiff _____					
Attorney (Name & Address) <u>Justin R. Glenn, 100 Vision Drive, Ste. 200, Jackson, MS 39211</u> MS Bar No. <u>105400</u>					
___ Check (x) if Individual Filing Initial Pleading is NOT an attorney					
Signature of Individual Filing: <u></u>					
Defendant - Name of Defendant - Enter Additional Defendants on Separate Form					
Individual _____ Last Name First Name Maiden Name, if applicable M.I. Jr/Sr/III/IV					
___ Check (x) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: _____ Estate of _____					
___ Check (x) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: _____ D/B/A or Agency _____					
Business <u>Singing River Electric Cooperative a/k/a Singing River Electric Power Association</u> Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated					
___ Check (x) if Business Defendant is acting in the name of an entity other than the above, and enter below: _____ D/B/A _____					
Attorney (Name & Address) - If Known _____ MS Bar No. _____					
___ Check (x) if child support is contemplated as an issue in this suit. * *If checked, please submit completed Child Support Information Sheet with this Cover Sheet					
Nature of Suit (Place an "X" in one box only)					
<div style="border: 1px solid black; padding: 2px; text-align: center;">Domestic Relations</div> <div><input type="checkbox"/> Child Custody/Visitation <input type="checkbox"/> Child Support <input type="checkbox"/> Contempt <input type="checkbox"/> Divorce: Fault <input type="checkbox"/> Divorce: Irreconcilable Diff. <input type="checkbox"/> Domestic Abuse <input type="checkbox"/> Emancipation <input type="checkbox"/> Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Property Division <input type="checkbox"/> Separate Maintenance <input type="checkbox"/> Term. of Parental Rights-Chancery <input type="checkbox"/> UIFSA (eff 7/1/97; formerly URESA) <input type="checkbox"/> Other _____</div>	<div style="border: 1px solid black; padding: 2px; text-align: center;">Business/Commercial</div> <div><input type="checkbox"/> Accounting (Business) <input type="checkbox"/> Business Dissolution <input type="checkbox"/> Debt Collection <input type="checkbox"/> Employment <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Replevin <input type="checkbox"/> Other _____</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Probate</div> <div><input type="checkbox"/> Accounting (Probate) <input type="checkbox"/> Birth Certificate Correction <input type="checkbox"/> Mental Health Commitment <input type="checkbox"/> Conservatorship <input type="checkbox"/> Guardianship <input type="checkbox"/> Heirship <input type="checkbox"/> Intestate Estate <input type="checkbox"/> Minor's Settlement <input type="checkbox"/> Muniment of Title <input type="checkbox"/> Name Change <input type="checkbox"/> Testate Estate <input type="checkbox"/> Will Contest <input type="checkbox"/> Alcohol/Drug Commitment (Involuntary)</div>	<div style="border: 1px solid black; padding: 2px; text-align: center;">Children/Minors - Non-Domestic</div> <div><input type="checkbox"/> Adoption - Contested <input type="checkbox"/> Adoption - Uncontested <input type="checkbox"/> Consent to Abortion <input type="checkbox"/> Minor Removal of Minority <input type="checkbox"/> Other _____</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Civil Rights</div> <div><input type="checkbox"/> Elections <input type="checkbox"/> Expungement <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Post Conviction Relief/Prisoner <input type="checkbox"/> Other _____</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Contract</div> <div><input type="checkbox"/> Breach of Contract <input type="checkbox"/> Installment Contract <input type="checkbox"/> Insurance <input type="checkbox"/> Specific Performance <input type="checkbox"/> Other _____</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Statutes/Rules</div> <div><input type="checkbox"/> Bond Validation <input type="checkbox"/> Civil Forfeiture <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Injunction or Restraining Order <input type="checkbox"/> Other <u>77-5-235</u></div>	<div style="border: 1px solid black; padding: 2px; text-align: center;">Real Property</div> <div><input type="checkbox"/> Adverse Possession <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Eviction <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Lien Assertion <input type="checkbox"/> Partition <input type="checkbox"/> Tax Sale: Confirm/Cancel <input type="checkbox"/> Title Boundary or Easement <input type="checkbox"/> Other _____</div> <div style="border: 1px solid black; padding: 2px; text-align: center;">Torts</div> <div><input type="checkbox"/> Bad Faith <input type="checkbox"/> Fraud <input type="checkbox"/> Intentional Tort <input type="checkbox"/> Loss of Consortium <input type="checkbox"/> Malpractice - Legal <input type="checkbox"/> Malpractice - Medical <input type="checkbox"/> Mass Tort <input type="checkbox"/> Negligence - General <input type="checkbox"/> Negligence - Motor Vehicle <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability <input type="checkbox"/> Subrogation <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Other _____</div>		

CIRCUIT - CIVIL

HANDED ☒

MAILED ☐

Received Of

Cause No.

For: Clerk's Fees\$85.00

JSO Fund\$40.00

Steno Tax\$10.00

Jury Tax\$3.00

Law Library\$2.50

SCEF\$2.00

Court Adm. Fund\$2.00

CECSF\$10.00

CLAF\$5.00

SCCF\$0.50

RM FEE\$1.00

Copy of Summons Return

Other Advance Cost

TOTAL\$ 161.00

Total

Amount Paid \$

For

2.00

159.00

Complaint

Check

No.

cash

1493

RANDY CARNEY

CIRCUIT CLERK OF JACKSON COUNTY

By

DEPUTY CIRCUIT CLERK

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSISSIPPI

BARRETT BARIA

PLAINTIFF

v.

CIVIL CAUSE NO.: 2019-00,051(1)

FILED

MAR 22 2019

SINGING RIVER ELECTRIC
COOPERATIVE a/k/a SINGING
RIVER ELECTRIC POWER ASSOCIATION

DEFENDANT

RANDY CARNEY, CLERK

BY [Signature] D.C.

**COMPLAINT
(Jury Trial Requested)**

COMES NOW, Plaintiff Barrett Baria, and hereby alleges the following against Singing River Electric Cooperative a/k/a Singing River Electric Power Association ("Defendant"):

Nature of the Action

1. "Most people who live or work in rural America must buy their electricity from their local co-operative, a unique and largely unregulated type of utility. [. . .] Electric co-ops are owned by their customers, who are called 'members' of the co-op due to their dual role as customer/owner." See Representative Jim Cooper, *Electric Co-Operatives: From New Deal to Bad Deal?*, 45 Harv. J. on Legis. 335, 335–37 (2008). Notably, "[e]lectric co-ops . . . control \$100 billion in assets and \$31 billion in member equity. Because so few members are aware of their ownership, this \$31 billion may be among the largest 'lost pools of capital' in America." *Id.* at 337 (emphasis added).

Allegations Common to All Claims

2. Defendant is the second largest rural electric cooperative in the State of Mississippi, providing electricity to tens of thousands of men, women, businesses, and bodies politic in approximately five (5) Mississippi counties.

3. Defendant is also a non-profit organized and created under Miss. Code Ann. § 77-5-205 (1936). It must operate at cost, without profit, and be managed solely for the benefit of the ratepayers—i.e., the members/owners.

4. As a rural electric cooperative, Defendant may not retain revenues or receipts that are not reasonably necessary for operating and maintenance expenses, associated debt obligations, and/or reasonable reserves. These amounts (or “margins”) are excess and must be returned to the member-ratepayers to whom they belong.

5. To effectuate this requirement, Mississippi law provides that an electric cooperative must refund any and all excess revenues and receipts to its members-ratepayers (the “Refund Requirement”). To illustrate, Miss. Code Ann. § 77-5-235 (1936) (amended July 1, 2016) states that:

A corporation formed under the provisions of this article shall have power to charge reasonable fees, rents, tolls, prices and other charges for service rendered which shall be sufficient at all times to pay all operating and maintenance expenses necessary or desirable for the prudent conduct and operation of its business and to pay the principal of and interest on such obligations as the corporation may have issued and/or assumed in the performance of the purpose for which it was formed. The revenues and receipts of a corporation shall first be devoted to such operating and maintenance expenses and to the payment of such principal and interest and thereafter to such reserves for improvement, new construction, depreciation and contingencies as the board may from time to time prescribe. **Revenues and receipts not needed for these purposes shall be returned to the members**, by the reimbursement of membership fees, or by way of general rate reductions, as the board may decide.

Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016) (emphasis added).

6. Despite the Refund Requirement, Defendant has accumulated millions of dollars in excess revenues and receipts that it has failed to return to its members. As of the end of the 2016 calendar year, it held approximately \$149,643,679 million of its member-owners’ money, i.e., excess revenues and receipts, in a placeholder account and had invested another \$60,663,747 in

associated organizations.

7. Under Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016) any and all excess revenues and/or receipts held by Defendant must be refunded to its members.

8. Upon information and belief, as of the end of 2016 calendar year, Defendant held excess revenues and receipts equal to roughly 41% of its assets.

9. The Refund Requirement does not mean that Defendant was not or is not entitled to retain any revenues. It does, however, require the return of excess revenues and receipts, i.e., amounts not needed to pay reasonable operating and maintenance expenses (or any associated debt obligations) or to maintain reasonable working reserves.

10. However, at the close of the 2016 fiscal year, Defendant held excess revenues and receipts equal to approximately 41% of its total assets. This amount far exceeds what is reasonably necessary to maintain reasonable working reserves.

11. According to its 2016 Financial and Operating Report filed with Rural Utilities Services, Defendant could easily return a large amount of excess revenue to its member-owners while maintaining a safe and stable level of equity and short-term assets.

12. Indeed, the federal lending agency responsible for issuing loans to rural electric cooperatives has established a safe-harbor, i.e., a level of capital and liquidity that is deemed sufficient to maintain adequate reserves and which also allows for the return of excess revenues and receipts to the members.

13. Plaintiff, therefore, seeks to have Defendant return all excess revenues and receipts it has unlawfully and/or unnecessarily accumulated and retained to its member-owners in proportion to their respective patronage, as required and mandated under Miss. Code Ann. § 77-5-235 (1936) (amended July 1, 2016).

Parties

14. Barrett Baria is a resident of Jackson County, Mississippi and a former member-ratepayer of Singing River Electric Cooperative.

15. Members 2-55,516 are member-ratepayers of Singing River Electric Cooperative who are likewise owed a return in accordance with the Mississippi Supreme Court's recent decision in *The Door Shop, Inc. v. Alcorn County Electric Power Association*, 261 So. 3d 1099, 1106 (Miss. 2018) ("Rate discrimination, which state and federal law prohibits, occurs when consumers of the same class (i.e., residential or commercial) are charged different rates ***or are provided with rebates or other concessions, directly or indirectly.***" (emphasis added)).

16. Defendant has the power to sue and be sued pursuant to Miss. Code Ann. § 77-5-231(a).

Jurisdiction and Venue

17. This is an action requiring Singing River Electric Cooperative to place the excess revenues and receipts of the cooperative into a constructive trust and/or to return the same in proper amounts to Plaintiff and/or other member-owners.

18. This Court has jurisdiction over the subject matter of this action pursuant to Miss. Const. Ann. Art. 6, § 159 of the Constitution of the State of Mississippi.

19. This Court has personal jurisdiction over Singing River Electric Cooperative since it was organized, created and currently operates in Mississippi; operates, conducts, engages in, and carries on a business or business venture in Mississippi; and has an office and agency in Mississippi.

20. Venue is proper pursuant to Miss. Code Ann. § 11-11-3.

Factual Allegations

I. Singing River Electric Cooperative Must Refund Excess Revenues and Receipts to Its Member-Owners.

21. The principles by which rural electric cooperatives, such as Singing River Electric Cooperative, are organized and operated are fundamentally different from the principles governing the traditional corporate model widely used in America's capitalist system.

22. In the traditional corporate model, shareholders' rights depend upon the shareholders' investment of capital. Shareholders vote based on the amount of stock they purchase and expect to profit in proportion to their risk. The corporation is organized and operated to maximize profit. Shareholders choose directors based on their ability to increase corporate profits.

23. In contrast, electric cooperatives are organized in a "democratic" fashion, with each member-owner having an equal vote without regard to his or her capital investment.

24. Electric cooperatives, such as Singing River Electric Cooperative, are required to operate at cost, for the benefit of member-owners, and not for the benefit of the corporate entity or any investors—or any board member.

25. Under common law, these organizational and operational principles are frequently summarized as: (1) electric cooperatives must be democratically controlled by their members, (2) electric cooperatives must operate at cost, and (3) electric cooperatives must be operated solely for the benefit of their respective members.

26. Cooperatives therefore maintain a special relationship of trust with their members since they operate for their member-owners' benefit and not to maximize profit.

27. Electric cooperatives that operate pursuant to these principles are exempt from federal income taxes under Internal Revenue Code section 501(c) (12) and its predecessors. Singing River Electric Cooperative is classified as a section 501(c) (12) corporation for federal tax

purposes.

28. To ensure that electric cooperatives adhere to the requisite fundamental organizational and operating principles necessary to maintain their 501(c)(12) status, the IRS requires, among other things, that:

- a) Singing River shall maintain adequate records of each member-ratepayer's rights and interest in the assets of the cooperative;
- b) Singing River shall return excess revenues proportionate to its members; and
- c) Singing River is prohibited from retaining more funds than they need to meet current losses and expenses.

A. Mississippi Electric Cooperatives Are Organized and Operated for the Benefit of Their Member-Owners Not for Accumulating Profit.

29. In 1936, the State of Mississippi enacted the Rural Electrification Authority Law, which authorized the formation and creation of electric cooperatives. Under the Electric Power Association Law, cooperatives **must be non-profit**. Miss. Code Ann. § 77-5-205 (1936).

30. The basic principles governing electric cooperatives' treatment of excess revenues and receipts apply in Mississippi as well. Any net margins belong to member-owners and must be returned to member-owners pursuant to 77-5-235 (1936) (amended 2016).

31. Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016) specifically provides two exclusive methods for the mandatory return of excess revenues and receipts: (1) by the reimbursement of membership fees, or (2) by way of general rate reductions, as the board may decide.

32. In addition, according to Miss. Code Ann. § 77-5-235 (1936) (amended July 1, 2016), the revenues and receipts of an electric cooperative shall first be devoted:

- a) To such operating and maintenance expenses and to the payment of such

principal and interest; and

- b) To such reserves for improvements, new construction, and contingencies as the board may from time to time prescribe.

Revenues and receipts **not needed** for these purposes shall be returned to the members.

II. Electric Cooperatives Require Very Little Equity and Very Little Cash to Operate Effectively.

33. Electric cooperatives, such as Singing River Electric Cooperative, are not only electric utilities with a stable and secure income stream, but also are eligible for federal loans at incredibly low rates. Electric cooperatives can fund operating and maintenance expenses and related debt obligations and maintain reasonable working reserves without holding significant amounts of excess revenue or cash and/or cash equivalents.

34. Singing River Electric Cooperative, however, holds excess revenues and receipts of the cooperative as “patronage capital” in an attempt to circumvent the statutory mandates of Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016).

A. Electric Cooperatives Typically Do Not Need to Retain Cash in Excess of Current Liabilities.

35. Electric cooperatives are utilities that operate monopolies. They have a regular and predictable cash flow. **If the need arises**, they can obtain hardship loans from the RUS.

36. Electric cooperatives are eligible for federal loans and loan guarantees from the Rural Utilities Service (“RUS”), a division of the United States Department of Agriculture. RUS loans are made available at interest rates that are based on the federal Treasury Department’s cost of borrowing, plus 1/8 of one percent. The cost to an electric cooperative for a 30-year loan, provided or guaranteed by the RUS in May 2015, was approximately **three percent per year**.

37. In 1996, cooperatives joined together to create the National Rural Utilities Cooperative Finance Corporation ("CFC"). The CFC also makes guaranteed loans available to electric cooperatives at the Treasury rate plus 1/8 of one percent.

38. Because electric cooperatives have access to federal loan guarantees at very low interest rates, they can function with a very low debt-to-equity ratio.

39. Electric cooperatives also may maintain lower levels of members equity because they operate a business that provides a safe, guaranteed return. Electric cooperatives operate utilities. As is the case in Mississippi, the distribution of electricity in certificated service areas is prohibited. In Mississippi, electric cooperatives also set their own electric rates.

40. Accordingly, there is minimal risk that an electric cooperative, like Singing River Electric Cooperative, will be unable to repay its loans.

41. RUS also makes hardship loans available to electric cooperatives if they have suffered a severe unavoidable hardship, such as a natural disaster. Thus, even when an electric cooperative faces circumstances, that in other industries might require the use of retaining earnings, the federal government ensures that loans are available instead. The availability of such programs makes debt financing even safer.

42. Lenders in the private sector often require borrowers to provide a minimum amount of equity prior to financing a loan. In contrast, **the RUS and CFC have eliminated any minimum equity requirement** for the loans they issue or guarantee. This further lessens the need to retain any excess revenues or receipts.

43. The RUS regulations address a situation in which an electric cooperative distributor is required by its loan documents **to obtain RUS approval before returning member equity/excess revenues.** 7 C.F.R. 1717.617. The regulations provide for automatic approval when

an electric cooperative's equity will be greater than or equal to **30% of total assets**, so long as the cooperative is current on its payments, not in default, **and has a 1:1 current ratio**. *Id.*

44. Upon information and belief, the CFC authorizes the retirement of member equity/excess revenues so long as equity remains at or above 20% of assets.

45. Similarly, certain provisions in standard RUS mortgages and loan contracts require the RUS to approve of certain investments, loans, and guarantees by electric cooperatives. Electric cooperatives are exempt from this requirement if they meet certain financial criteria, including maintaining equity that is equal to **at least 27%** of total assets. 7 C.F.R. § 1717.656.

46. For many of the same reasons that electric cooperatives can operate at low levels of equity, they can also operate with a low ratio of current assets to current liabilities.

III. Singing River Electric Cooperative Has Failed to Return an Adequate Amount of Excess Revenues and Receipts to Its Members.

47. Dating back many years, Singing River Electric Cooperative has unlawfully retained, misappropriated, and/or converted the excess revenues and receipts that it earned. There was no reasonable basis for retaining those excess revenues and receipts, since it already had sufficient revenue to fund operating and maintenance expenses, necessary debt service obligations, and reasonable working reserves.

A. To Circumvent Miss. Code Ann. § 77-5-235 (1936), and In Direct Contradiction Thereof, Singing River Electric Cooperative Holds Excessive Revenues and Receipts in An Account Designated as "Patronage Capital."

48. Singing River Electric Cooperative holds an enormous amount of excess revenues and receipts as "patronage capital." Specifically, as of the end of the 2016 calendar year, it held more than \$149,643,679 in excess revenues as "patronage capital."

49. This amount is well in excess of any amount that is reasonably necessary for reserves and should be refunded to the member-owners in proportion to their patronage. This

would not affect its operations or ability to function in the slightest

B. Singing River Electric Cooperative Does Not Return Enough Excess Revenues to Member-Owners.

50. Despite holding a substantial amount of retained earnings, Singing River Electric Cooperative has returned only a small portion of excess revenues and receipts to its member-ratepayers. The remaining amount has been retained, misappropriated, and/or converted by Singing River Electric Cooperative, even though it was not necessary to fund operating or maintenance expenses, necessary debt service obligations, or reasonable working reserves. It should be returned to the member-owners as mandated by Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016).

51. Singing River Electric Cooperative touts the fact that it “allocates” the profits it earns each year as “capital credits” (i.e., IOUs) to accounts held in the name of its members and that it returns capital to members and former members in an amount determined by the Board of Directors each year.

52. Even if Singing River Electric Cooperative has returned some excess revenue, it has retained, misappropriated, and/or converted more.

53. Singing River Electric Cooperative is not returning excess revenues and receipts in accordance with legal requirements. Instead, it is improperly overcharging members and holding on to and/or converting the excess.

IV. Singing River Electric Cooperative’s Failure to Properly Return Excess Revenues and Receipts Imposes Significant Harm on Its Member-Owners.

54. Retaining member equity is a form of coerced borrowing that occurs when electric cooperatives charge their member-owners more than its services actually cost. This coerced

borrowing is a very bad deal for member-owners.

55. While electric cooperatives can borrow money at what is effectively the Treasury rate, its individual members-owners typically cannot. Instead, when members borrow money to: finance a tractor; make a home repair; or, pay for their children's college tuition, he or she must pay significantly higher interest rates than those available to the electric cooperative. In some cases, member-owners may be forced to forego critical expenditures, or to carry debt with high monthly rates, even as the members equity he or she has accumulated lies dormant with the electric cooperative or is used to generate investment income, it is generated for the cooperative and not the members themselves.

56. Cooperatives sometimes argue that maintaining excess capital has the overall effect of reducing rates. This argument really means only that cooperatives can keep their rates artificially low by coercing their members to provide them with interest-free loans. In other words, the cooperative appropriates the time value of its members' money and claims credit for having used that money for interest-free loans.

57. In 2005, the National Rural Electric Cooperative Association and the electric cooperative lending organization, the CFC, published the *Capital Credits Task Force Report: A Distribution Cooperative's Guide to Making Capital Credits Decisions*. The Report's authoring bodies were an electric cooperative trade association and lending organization that had a strong interest in protecting the interests of their members/borrowers. Nevertheless, the report concluded that "lower equity is likely to result in a lower overall cost to the member."

First Cause of Action

Violation of Miss. Code Ann. § 77-5-235 Requirement to Refund Excess Revenues and Receipts (Code Version Prior to July 1, 2016)

58. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 57 above as if set forth fully herein.

59. Under Miss. Code Ann. § 77-5-235, prior to July 1, 2016, excess revenues and receipts must be returned to the member-ratepayers.

60. Defendant has historically either returned an insufficient amount or not returned an amount at all.

61. Defendant, as of the close of fiscal year 2016, held approximately \$149,643,679 million in excess revenues and receipts. This amount far exceeds what is reasonably needed for necessary operating and maintenance expenses, debt obligations, and reasonable working reserves.

62. The complete absence of refunds or the inadequacy of the refunds have resulted in Defendant holding and/or converting money that rightfully belongs to the member-ratepayers.

63. Plaintiff, and other member-owners, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess revenues and receipts.

Second Cause of Action
Fraudulent Concealment

64. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 63 above as if set forth fully herein.

65. Defendant paid excess revenues to its member-ratepayers that were insufficient but led customers to believe they were receiving what they were entitled to receive.

66. In paying out funds in amounts less than what was actually owed to its member-ratepayers, Defendant intentionally hid from its member-ratepayers sums of money they were entitled to receive under Miss. Code Ann. § 77-5-235 (1936).

67. A member-ratepayer, even with due diligence, would be unable to uncover Defendant's concealment of the amount actually to be paid because of the complexity involved with calculating excess revenues, particularly when disguised as "patronage capital."

Third Cause of Action
Breach of Fiduciary Duty

68. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 67 above as if set forth fully herein.

69. As an electric cooperative, Defendant owed a fiduciary duty to its member-ratepayers to return excess revenues in accordance with their respective patronage, to the extent such revenues and receipts exceeded necessary operating and maintenance expenses, debt obligations, and reasonable working reserves.

70. Defendant's revenues and receipts have exceeded the amount necessary to pay necessary operating and maintenance expenses, debt obligations, and reasonable working reserves. but Defendant did not return excess revenues to its members as it was required to do based upon the fiduciary and statutory duty owed to its members.

71. Plaintiff, and other member-owners, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess revenues and receipts.

Fourth Cause of Action
Unjust Enrichment

72. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 71 above as if set forth fully herein.

73. Plaintiff, and other member-owners, unknowingly conferred on Defendant a benefit in the form of rate payments in excess of the amounts necessary to pay operating and maintenance expenses, debt obligations, and reasonable working reserves.

74. Defendant has accepted and retained the benefit, and under the circumstances, it is inequitable for it to enjoy the benefit of the retained excess without properly compensating its member-owners.

75. Plaintiff, and other member-owners, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess revenues and receipts.

Fifth Cause of Action
Conversion

76. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 75 above as if set forth fully herein.

77. Defendant has a duty to return excess revenues and receipts to its member-ratepayers in accordance with their respective patronage, to the extent its such revenues and receipts exceeded necessary operating and maintenance expenses, debt obligations, and reasonable working reserves.

78. Defendant's revenues and receipts have exceeded the amount necessary to pay operating and maintenance expenses, debt obligations, and reasonable working reserves, but Defendant has refused to return same to its member-ratepayers in accordance with Miss. Code Ann. § 77-5-235 (1936) (amended July 1, 2016).

79. Defendant wrongfully deprived its member-ratepayers of their rights to their proportionate share of excess revenues and receipts with the intent to deprive them of such rights.

80. Plaintiff, and other member-owners, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess revenues and receipts.

Sixth Cause of Action
Constructive Trust

81. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 80 above as if set forth fully herein.

82. Plaintiff, and other member-owners, paid their rates based on an express or implied promise that excess revenues and receipts would be returned to them.

83. Plaintiff, and other member-owners, made their payments to Defendant in reliance upon the express or implied promise that they would be refunded excess revenues and receipts should any exist.

84. With respect to the disposition of the excess revenues and receipts of the cooperative, Defendant holds a fiduciary and confidential relationship of trust with its member-ratepayers and is required to refund to them any such excess.

85. Defendant has been unjustly enriched by retaining possession of the excess revenues and receipts it was required to return to its member-ratepayers, and it is against equity that Defendant should retain same.

86. Plaintiff, and other member-owners, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess revenues and receipts.

Seventh Cause of Action
Statutory Trust

87. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 86 above as if set forth fully herein.

88. Defendant has been unjustly enriched by retaining possession of the excess revenues and receipts it was required to return to its member-ratepayers.

89. Plaintiff avers that this Court should establish a trust pursuant to Miss. Code Ann. § 91-8-101. The trust would hold the excess revenues and receipts due to the other member-ratepayers of Defendant. Furthermore, pursuant to Miss. Code Ann. § 91-8-402, the trust can be for the benefit of beneficiaries known, such as your Plaintiff herein, and beneficiaries that can be ascertained in the future.

Eighth Cause of Action
Restitution/Money Had and Received

90. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 89 above as if set forth fully herein.

91. Defendant holds excess revenues and receipts which rightfully belong to Plaintiff and other member-owners and acknowledges the same.

92. In equity and good conscience, such excess revenues and receipts must be returned to the member-owners, including Plaintiff, in proportion to their respective patronage.

93. Under the circumstances as alleged herein, it would be inequitable to retain excess revenues and receipts without returning same to Plaintiff, and other member-ratepayers of Defendant as well.

Ninth Cause of Action
Negligence Per Se

94. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 93 above as if set forth fully herein.

95. At all pertinent times, Defendant violated Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016), of which Plaintiff is a member-ratepayer of the class sought to be protected by the statute, as was his damages.

96. As a direct and proximate cause of the aforementioned violation of Miss. Code Ann. § 77-5-235 (1936), Plaintiff, and other member-owners, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess revenues and receipts.

DECLARATORY JUDGMENT

97. Plaintiff, pursuant to Miss. R. Civ. P. 57(b), hereby seeks a declaratory judgment that if one member-ratepayer is owed a refund or rebate pursuant to Miss. Code Ann. § 77-5-235 based on the facts as alleged herein, then Singing River Electric Cooperative must also provide returns and/or rebates to other member-ratepayers in the same class—and that failure to do same would result in prohibited rate discrimination as pronounced by the Mississippi Supreme Court in *The Door Shop, Inc. v. Alcorn County Electric Power Association*, 2017-CA-00956-SCT, 2018 WL 5839172, at *6 (Miss. Nov. 8, 2018).

PUNITIVE DAMAGES

98. Plaintiff reserves the right to amend this complaint to seek punitive damages, to the extent that discovery supports a claim for such damages.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for the following relief against Singing River Electric Cooperative:

1. A Judgment for compensatory damages to Plaintiff, and other member-owners, in an amount equal to their proportionate share of retained revenues and/or receipts that are not reasonably necessary for operating and maintenance expenses, associated debt obligations, and/or reasonable reserves;
2. An Order enjoining Singing River Electric Cooperative to remit to Plaintiff, and other member-owners, their proportionate share of the aforementioned \$149,643,679 in excess

revenues and receipts;

3. A Declaratory Judgment that if one member-ratepayer is owed a refund or rebate pursuant to Miss. Code Ann. § 77-5-235 based on the facts as alleged herein, then Singing River Electric must also provide returns and/or rebates to other member-ratepayers in the same class—and that failure to do same would result in prohibited rate discrimination as pronounced by the Mississippi Supreme Court in *The Door Shop, Inc. v. Alcorn County Electric Power Association*, 2017-CA-00956-SCT, 2018 WL 5839172, at *6 (Miss. Nov. 8, 2018);


4. An Order establishing a constructive or statutory trust to hold all remaining excess revenues and receipts (i.e., “member equity,” “patronage capital,” “capital credits,” “net margins,” or any other terms used by Singing River Electric Cooperative to mask excess revenues and receipts) owed to the other member-ratepayers so as to not perpetuate “rate discrimination” as recently pronounced by the Mississippi Supreme Court in *The Door Shop, Inc. v. Alcorn County Electric Power Association*, 2017-CA-00956-SCT, 2018 WL 5839172, at *6 (Miss. Nov. 8, 2018);

5. An Order awarding Plaintiff the costs of prosecuting this action, including reasonable attorneys’ fees, expert fees and costs reasonably incurred for his efforts to have money held in trust and/or returned to member-owners;

6. An Order directing Singing River Electric Cooperative to provide an accounting of all accounts held by current and former members, deceased or living; and

7. Granting such other relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this the 21st day of March, 2019.


Justin R. Glenn MSB# 105400
One of the attorneys for Plaintiff

OF COUNSEL:

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IN THE CIRCUIT COURT OF JACKSON COUNTY MISSISSIPPI

BARRETT BARIA, ET AL

PLAINTIFFS

vs.

CIVIL ACTION NO. 2019-00,051(1)

SINGING RIVER ELECTRIC
COOPERATIVE a/k/a SINGING
RIVER ELECTRIC POWER ASSOCIATION

DEFENDANT

SUMMONS

To:

Singing River Electric Cooperative
Through its registered agent,
Brian K. Hughley
11187 Highway 63 South,
P.O. Box 767
Lucedale, MS 39452168

OR

Wherever he may be found

The Complaint which is attached to this Summons is important and you must take immediate action to protect your rights. You are required to mail or hand deliver a copy of a written response to the Complaint to the following:

JUSTIN R. GLENN
P.O. Box 22626, Jackson, MS 39225-2626
COSMICH, SIMMONS & BROWN, PLLC

Your response must be mailed or delivered within thirty (30) days from the date of delivery of this Summons and Complaint or a default judgment will be entered against you for the moneys or things demanded in the Complaint.

You must also file the original of your responses with the Clerk of this Court within a reasonable time afterwards.

ISSUED under my hand and seal of said Court, this the 22 day of Mar, 2019.



Randy Carney
Jackson County Circuit Clerk
P.O. Box 998
Pascagoula, MS 39568

By: Haley Gambrell, D.C.

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSISSIPPI

BARRETT BARIA

PLAINTIFF

v.

CAUSE NO. 2019-00051-RK

SINGING RIVER ELECTRIC
COOPERATIVE a/k/a SINGING
RIVER ELECTRIC POWER ASSOCIATION

DEFENDANT

FIRST AMENDED COMPLAINT
(Jury Trial Requested)

COMES NOW, Plaintiff Barrett Baria, and hereby alleges the following against Singing River Electric Cooperative a/k/a Singing River Electric Power Association (“Defendant”):

Nature of the Action

1. “Most people who live or work in rural America must buy their electricity from their local co-operative, a unique and largely unregulated type of utility. [. . .] Electric co-ops are owned by their customers, who are called ‘members’ of the co-op due to their dual role as customer/owner.” See Representative Jim Cooper, *Electric Co-Operatives: From New Deal to Bad Deal?*, 45 Harv. J. on Legis. 335, 335–37 (2008). Notably, “[e]lectric co-ops . . . control \$100 billion in assets and \$31 billion in member equity. Because so few members are aware of their ownership, this **\$31 billion** may be among the largest **‘lost’ pools of capital** in America.” *Id.* at 337 (emphasis added).

Allegations Common to All Claims

2. Defendant is the second largest electric cooperative in the State of Mississippi, providing electricity to tens of thousands of men, women, businesses, and bodies politic in approximately five (5) Mississippi counties.

3. Defendant is also a non-profit corporation organized and created under Miss. Code Ann. § 77-5-205 (1936). It must operate at cost, without profit, and be managed solely for the benefit of the ratepayers—i.e., the members/owners.

4. As an electric cooperative, Defendant may not retain revenues or receipts that are not reasonably necessary for operating and maintenance expenses, associated debt obligations, and/or reasonable reserves. These amounts (or “margins”) are excess earnings and must be returned to the member-ratepayers to whom they belong.

5. To effectuate this requirement, Mississippi law provides that an electric cooperative must refund any and all excess revenues and receipts to its members-ratepayers (the “Refund Requirement”). To illustrate:

A corporation formed under the provisions of this article shall have power to charge reasonable fees, rents, tolls, prices and other charges for service rendered which shall be sufficient at all times to pay all operating and maintenance expenses necessary or desirable for the prudent conduct and operation of its business and to pay the principal of and interest on such obligations as the corporation may have issued and/or assumed in the performance of the purpose for which it was formed. The revenues and receipts of a corporation shall first be devoted to such operating and maintenance expenses and to the payment of such principal and interest and thereafter to such reserves for improvement, new construction, depreciation and contingencies as the board may from time to time prescribe. **Revenues and receipts not needed for these purposes shall be returned to the members**, by the reimbursement of membership fees, or by way of general rate reductions, as the board may decide.

Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016) (emphasis added).

6. Despite the Refund Requirement, Defendant has accumulated millions of dollars in excess revenues and receipts that it has failed to return to the member-ratepayers and owners. At the end of the 2016 tax year, it held approximately \$149,643,679 million of member-ratepayers’ money, i.e., excess earnings, in a placeholder account and, upon information and belief, had invested another \$60,663,747 in associated organizations.

7. Under Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016) any and all excess revenues and/or receipts held by Defendant must be refunded to the member-ratepayers.

8. The Refund Requirement does not mean that Defendant was not or is not entitled to retain any revenues. It does, however, require the return of excess revenues and receipts, i.e., amounts not reasonably needed to fund or otherwise maintain reasonable working reserves.

9. Yet, at the close of the 2016 tax year, Defendant held excess revenues and receipts equal to approximately 41% of its total assets. This amount far exceeds what is reasonably necessary to maintain reasonable working reserves, and Defendant could easily return a large amount of excess revenue to the member-owners and ratepayers while maintaining a safe and stable level of equity and short-term assets.

10. Indeed, the federal lending agency responsible for issuing loans to electric cooperatives has established a safe-harbor, i.e., a level of capital and liquidity that is deemed sufficient to maintain adequate reserves and which also allows for the return of excess earnings to the member-ratepayers.

11. Plaintiff, therefore, seeks to have Defendant return all excess revenues and receipts it has unlawfully accumulated, retained and/or converted to the member-owners and ratepayers of the cooperative, current and former, in compliance with Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016), and to do so in proportion to their respective usages.

Parties

12. Barrett Baria is a resident of Jackson County, Mississippi and a former member-owner and ratepayer of Singing River Electric Cooperative.

13. Members 2-55,516 are member-ratepayers and owners of Singing River Electric Cooperative who are likewise owed a return in accordance with the Mississippi Supreme Court's

recent decision in *The Door Shop, Inc. v. Alcorn County Electric Power Association*, 261 So. 3d 1099, 1106 (Miss. 2018) (“Rate discrimination, which state and federal law prohibits, occurs when consumers of the same class (i.e., residential or commercial) are charged different rates ***or are provided with rebates or other concessions, directly or indirectly.***”) (emphasis added)).

14. Defendant has the power to sue and be sued pursuant to Miss. Code Ann. § 77-5-231(a).

Jurisdiction and Venue

15. This is an action requiring Singing River Electric Cooperative to return the accumulated excess revenues and receipts it held as of June 30, 2016 (whether by way of refunds,¹ reduced rates, the return of membership fees, or the like) to Plaintiff and/or other similarly-situated member-ratepayers and owners – both current and former – in proportion to their respective usage.

16. Alternatively, or, in addition to, Plaintiff seeks to enjoin Singing River Electric Cooperative to place the aforementioned excess earnings of the cooperative into a constructive or statutory trust for the return of same in proper amounts to Plaintiff and/or other member-ratepayers and owners – both current and former.

17. This Court has jurisdiction over the subject matter of this action pursuant to Miss. Const. Ann. Art. 6, § 159 of the Constitution of the State of Mississippi.

18. This Court has personal jurisdiction over Singing River Electric Cooperative since it was organized, created and currently operates in Mississippi; operates, conducts, engages in, and carries on a business or business venture in Mississippi; and has an office and agency in Mississippi.

¹ “[A]n unjust-enrichment award may consist of a refund, if that is equitable.” *Cates v. Swain*, 215 So. 3d 492, 496 (Miss. 2013) (maintaining further that “the chancellor did not abuse his discretion in awarding Swain ***a refund, a form of restitution***”) (emphasis added).

19. Venue is proper pursuant to Miss. Code Ann. § 11-11-3.

Factual Allegations

I. Singing River Electric Cooperative Must Refund Excess Revenues and Receipts to Its Member-Owners (Ratepayers).

20. The principles by which rural electric cooperatives, such as Singing River Electric Cooperative, are organized and operated are fundamentally different from the principles governing the traditional corporate model widely used in America's capitalist system.

21. In the traditional corporate model, shareholders' rights depend upon the shareholders' investment of capital. Shareholders vote based on the amount of stock they purchase and expect to profit in proportion to their risk. The corporation is organized and operated to maximize profit. Shareholders choose directors based on their ability to increase corporate profits.

22. In contrast, electric cooperatives are organized in a "democratic" fashion, with each member-owner having an equal vote without regard to his or her capital investment.

23. Electric cooperatives, such as Singing River Electric Cooperative, are required to operate at cost, for the benefit of member-ratepayers and owners, and not for the benefit of the corporate entity or any investors—or any board member.

24. Under common law, these organizational and operational principles are frequently summarized as: (1) electric cooperatives must be democratically controlled by their members, (2) electric cooperatives must operate at cost, and (3) electric cooperatives must be operated solely for the benefit of their respective members.

25. Cooperatives, therefore, maintain a special relationship of trust with their members since they operate for their member-owners' benefit and not to maximize profit.

26. Electric cooperatives that operate pursuant to these principles are exempt from federal income taxes under Internal Revenue Code section 501(c) (12) and its predecessors.

Singing River Electric Cooperative is classified as a section 501(c) (12) corporation for federal tax purposes.

27. To ensure that electric cooperatives adhere to the requisite fundamental organizational and operating principles necessary to maintain their 501(c)(12) status, the IRS requires, among other things, that:

- a) Singing River shall maintain adequate records of each member-ratepayer's rights and interest in the assets of the cooperative;
- b) Singing River shall return excess revenues proportionate to its members; and
- c) Singing River is prohibited from retaining more funds than they need to meet current losses and expenses.

A. Mississippi Electric Cooperatives Are Organized and Operated for the Benefit of Their Member-Owners (Ratepayers).

28. In 1936, the State of Mississippi enacted the Rural Electrification Authority Law, which authorized the formation and creation of electric cooperatives. Under the Electric Power Association Law, cooperatives **must be non-profit**. Miss. Code Ann. § 77-5-205 (1936).

29. The basic principles governing electric cooperatives' treatment of excess revenues and receipts apply in Mississippi as well. Any net margins or excess earnings belong to member-ratepayers and must be returned to them pursuant to 77-5-235 (1936) (amended July 1, 2016).

30. Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016) specifically provides two exclusive methods for the mandatory return of excess revenues and receipts: (1) by the reimbursement of membership fees, or (2) by way of general rate reductions, as the board may decide.

31. In addition, according to Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016), the revenues and receipts of an electric cooperative shall first be devoted:

- a) To such operating and maintenance expenses and to the payment of such principal and interest; and
- b) To such reserves for improvements, new construction, and contingencies as the board may from time to time prescribe.

Revenues and receipts not needed for these purposes shall be returned to the member-ratepayers.

II. Electric Cooperatives Require Very Little Equity and Very Little Cash to Operate Effectively.

32. Electric cooperatives, such as Singing River Electric Cooperative, are not only electric utilities with a stable and secure income stream, but also are eligible for federal loans at incredibly low rates. Electric cooperatives can fund operating and maintenance expenses and related debt obligations and maintain reasonable working reserves without holding significant amounts of excess earnings or cash and/or cash equivalents.

33. Singing River Electric Cooperative, however, holds excess revenues and receipts of the cooperative in a placeholder account in an attempt to circumvent the statutory mandates of Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016).

A. Electric Cooperatives Typically Do Not Need to Retain Cash in Excess of Current Liabilities.

34. Rural electric cooperatives are utilities that operate monopolies. They have a regular and predictable cash flow. If the need arises, they can obtain hardship loans from the RUS.

35. Electric cooperatives are eligible for federal loans and loan guarantees from the Rural Utilities Service (“RUS”), a division of the United States Department of Agriculture. RUS loans are made available at interest rates that are based on the federal Treasury Department’s cost of borrowing, plus 1/8 of one percent. The cost to an electric cooperative for a 30-year loan, provided or guaranteed by the RUS in May 2015, was approximately three percent per year.

36. In 1996, electric cooperatives joined together to create the National Rural Utilities Cooperative Finance Corporation (“CFC”). The CFC also makes guaranteed loans available to electric cooperatives at the Treasury rate plus 1/8 of one percent.

37. Because electric cooperatives have access to federal loan guarantees at very low interest rates, they can function with a very low debt-to-equity ratio.

38. Electric cooperatives also may maintain lower levels of members equity because they operate a business that provides a safe, guaranteed return. Electric cooperatives operate utilities. As is the case in Mississippi, the distribution of electricity in certificated service areas is prohibited. In Mississippi, electric cooperatives (i.e., 10-15 board members) also set their own electric rates.

39. Accordingly, there is minimal risk that an electric cooperative, like Singing River Electric Cooperative, will be unable to repay its loans.

40. RUS also makes hardship loans available to electric cooperatives if they have suffered a severe unavoidable hardship, such as a natural disaster. Thus, even when an electric cooperative faces circumstances, that in other industries might require the use of retaining earnings, the federal government ensures that loans are available instead. The availability of such programs makes debt financing even safer.

41. Lenders in the private sector often require borrowers to provide a minimum amount of equity prior to financing a loan. In contrast, **the RUS and CFC have eliminated any minimum equity requirement** for the loans they issue or guarantee. This further lessens the need to retain any excess revenues or receipts.

42. The RUS regulations address a situation in which an electric cooperative distributor is required by its loan documents **to obtain RUS approval before returning member equity/excess revenues.** 7 C.F.R. 1717.617. The regulations provide for automatic approval when an electric cooperative's equity will be greater than or equal to **30% of total assets**, so long as the cooperative is current on its payments, not in default, **and has a 1:1 current ratio.** *Id.*

43. Upon information and belief, the CFC authorizes the retirement of member equity/excess revenues so long as equity remains at or above 20% of assets.

44. Similarly, certain provisions in standard RUS mortgages and loan contracts require the RUS to approve of certain investments, loans, and guarantees by electric cooperatives. Electric cooperatives are exempt from this requirement if they meet certain financial criteria, including maintaining equity that is equal to **at least 27%** of total assets. 7 C.F.R. § 1717.656.

45. For many of the same reasons that electric cooperatives can operate at low levels of equity, they can also operate with a low ratio of current assets to current liabilities.

III. Singing River Electric Cooperative Has Failed to Return an Adequate Amount of Excess Revenues and Receipts to Its Member-Owners (Ratepayers).

46. Dating back many years, Singing River Electric Cooperative has unlawfully retained, misappropriated, and/or converted the excess revenues and receipts of the cooperative. There was (nor is) no reasonable basis for retaining those excess earnings, since it already had sufficient revenue to fund and maintain reasonable working reserves.

A. To Circumvent Miss. Code Ann. § 77-5-235 (1936), and In Direct Contradiction Thereof, Singing River Electric Cooperative Holds Excessive Revenues and Receipts in a Placeholder Account.

47. Singing River Electric Cooperative holds an enormous amount of excess revenues and receipts in a placeholder account. Specifically, as of the end of the 2016 tax year, it held more than \$149,643,679 in excess earnings.

48. This amount is well in excess of any amount that is reasonably necessary for reserves and should be refunded to the member-ratepayers in proportion to their usage. This would not affect its operations or ability to function in the slightest

B. Singing River Electric Cooperative Does Not Return Enough Excess Revenues to Member-Owners (Ratepayers).

49. Despite holding a substantial amount of retained earnings, Singing River Electric Cooperative has returned only a small portion of excess revenues and receipts to its member-ratepayers. The remaining amount has been retained, misappropriated, and/or converted by Singing River Electric Cooperative, even though it was neither needed nor necessary to fund or maintain reserves. It should be returned to the member-ratepayers as mandated by Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016).

50. Singing River Electric Cooperative touts the fact that it “allocates” the profits it earns each year as “capital credits” (i.e., IOUs) to accounts held in the name of its members and that it returns capital to members and former members in an amount determined by the Board of Directors each year.

51. Even if Singing River Electric Cooperative has returned some excess revenue, it has retained, misappropriated, and/or converted more.

52. Singing River Electric Cooperative is not returning excess revenues and receipts in accordance with legal requirements. Instead, it is improperly overcharging rural Mississippi ratepayers and holding on to and/or converting the excess.

IV. Singing River Electric Cooperative’s Failure to Properly Return Excess Revenues and Receipts Imposes Significant Harm on The Member-Owners (Ratepayers).

53. Retaining member equity is a form of coerced borrowing that occurs when electric

cooperatives charge their member-owners more than its services actually cost. This coerced borrowing is a very bad deal for member-owners.

54. While electric cooperatives can borrow money at what is effectively the Treasury rate, its individual members-owners typically cannot. Instead, when members borrow money to: finance a tractor; make a home repair; or, pay for their children's college tuition, he or she must pay significantly higher interest rates than those available to the electric cooperative. In some cases, member-owners may be forced to forego critical expenditures, or to carry debt with high monthly rates, even as the members equity he or she has accumulated lies dormant with the electric cooperative or is used to generate investment income, it is generated for the cooperative and not the members themselves.

55. Cooperatives sometimes argue that maintaining excess capital has the overall effect of reducing rates. This argument really means only that cooperatives can keep their rates artificially low by coercing their members to provide them with interest-free loans. In other words, the cooperative appropriates the time value of its members' money and claims credit for having used that money for interest-free loans.

56. In 2005, the National Rural Electric Cooperative Association and the electric cooperative lending organization, the CFC, published the *Capital Credits Task Force Report: A Distribution Cooperative's Guide to Making Capital Credits Decisions*. The Report's authoring bodies were an electric cooperative trade association and lending organization that had a strong interest in protecting the interests of their members/borrowers. Nevertheless, the report concluded that "lower equity is likely to result in a lower overall cost to the member."

First Cause of Action

Violation of Miss. Code Ann. § 77-5-235 Requirement to Refund Excess Revenues and Receipts (Code Version Prior to July 1, 2016)

57. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 56 above as if set forth fully herein.

58. Under Miss. Code Ann. § 77-5-235, prior to July 1, 2016, excess revenues and receipts must be returned to the member-ratepayers.

59. Defendant, historically, has either returned an insufficient amount or not returned an amount at all.

60. Defendant, as of the close of the 2016 tax year, held approximately \$149,643,679 million in excess revenues and receipts. This amount far exceeds what is needed to fund or maintain reasonable working reserves.

61. The complete absence of returns or the inadequacy of the returns have resulted in Defendant holding and/or converting money that rightfully belongs to the member-ratepayers.

62. Plaintiff, and other member-owners and ratepayers of the cooperative, current and former, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess earnings.

Second Cause of Action
Fraudulent Concealment

63. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 62 above as if set forth fully herein.

64. Defendant paid excess revenues to its member-ratepayers that were insufficient but led customers to believe they were receiving what they were entitled to receive.

65. In paying out funds in amounts less than what was actually owed to its member-ratepayers, Defendant intentionally hid from its member-ratepayers sums of money they were entitled to receive under Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016).

66. A member-ratepayer, even with due diligence, would be unable to uncover Defendant's concealment of the amount actually to be paid because of the complexity involved with calculating excess revenues and receipts, particularly when disguised and/or relabeled.

Third Cause of Action
Breach of Fiduciary Duty

67. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 66 above as if set forth fully herein.

68. To the extent that the revenues and receipts of the cooperative exceeded the amount reasonably needed for necessary operating and maintenance expenses, associated debt obligations, and a reasonable working reserve, Defendant, as an unregulated member-owned "non-profit" electric cooperative, owed a fiduciary duty (and still does) to return any excess to the member-ratepayers and owners in proportion to their respective usage.

69. The revenues and receipts of the cooperative have exceeded the amount necessary to pay prudent operating and maintenance expenses and related debt obligations and to fund and maintain a reasonable working reserve.

70. Defendant, however, did not return any such excess to the member-ratepayers as it was (and is) required to do based upon the fiduciary and statutory duty owed to its members.

71. Plaintiff, and other member-owners and ratepayers of the cooperative, current and former, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess earnings.

Fourth Cause of Action
Unjust Enrichment

72. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 71 above as if set forth fully herein.

73. Plaintiff, and other similarly-situated member-owners and ratepayers, unknowingly conferred on Defendant a benefit in the form of rate payments in excess of the amounts necessary to pay prudent operating and maintenance expenses, debt obligations, and reasonable working reserves.

74. Defendant has accepted and retained the benefit, and under the circumstances, it is inequitable for it to enjoy the benefit of the retained excess without properly compensating its member-owners.

75. Plaintiff, and other member-owners and ratepayers of the cooperative, current and former, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess earnings.

Fifth Cause of Action
Conversion

76. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 75 above as if set forth fully herein.

77. Defendant has a duty to return excess revenues and receipts to its member-ratepayers in proportion to their respective usage, to the extent its such revenues and receipts exceeded necessary operating and maintenance expenses, debt obligations, and reasonable working reserves.

78. Defendant's revenues and receipts have exceeded the amount necessary to pay operating and maintenance expenses, debt obligations, and reasonable working reserves, but

Defendant has refused to return same to its member-ratepayers in accordance with Miss. Code Ann. § 77-5-235 (1936) (amended July 1, 2016).

79. Defendant wrongfully deprived its member-ratepayers of their rights to their proportionate share of excess revenues and receipts with the intent to deprive them of such rights.

80. Plaintiff, and other member-owners and ratepayers of the cooperative, current and former, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess earnings.

Sixth Cause of Action
Constructive Trust

81. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 80 above as if set forth fully herein.

82. Plaintiff, and other member-owners, paid their rates based on an express or implied promise that excess revenues and receipts would be returned to them.

83. Plaintiff, and other member-owners, made their payments to Defendant in reliance upon the express or implied promise that they would be refunded excess revenues and receipts should any exist.

84. With respect to the disposition of the excess revenues and receipts of the cooperative, Defendant holds a fiduciary and confidential relationship of trust with its member-ratepayers and is required to refund to them any such excess.

85. Defendant has been unjustly enriched by retaining possession of the excess revenues and receipts it was required to return to its member-ratepayers, and it is against equity that Defendant should retain same.

86. Plaintiff, and other member-owners and ratepayers of the cooperative, current and former, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess earnings.

Seventh Cause of Action
Statutory Trust

87. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 86 above as if set forth fully herein.

88. Defendant has been unjustly enriched by retaining possession of the excess revenues and receipts it was required to return to its member-ratepayers.

89. Plaintiff avers that this Court should establish a trust pursuant to Miss. Code Ann. § 91-8-101. The trust would hold the excess revenues and receipts due to the other member-ratepayers of Defendant. Furthermore, pursuant to Miss. Code Ann. § 91-8-402, the trust can be for the benefit of beneficiaries known, such as your Plaintiff herein, and beneficiaries that can be ascertained in the future.

Eighth Cause of Action
Restitution/Money Had and Received

90. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 89 above as if set forth fully herein.

91. Defendant holds excess revenues and receipts which rightfully belong to Plaintiff and other member-owners and acknowledges the same.

92. In equity and law, such excess revenues and receipts must be returned to the member-owners (the ratepayers), including Plaintiff, in proportion to their respective usage.

93. Under the circumstances as alleged herein, it would be inequitable to retain excess revenues and receipts without returning same to Plaintiff, and other member-owners and ratepayers of the cooperative, current and former.

Ninth Cause of Action
Negligence Per Se

94. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 93 above as if set forth fully herein.

95. At all pertinent times, Defendant violated Miss. Code Ann. § 77-5-235 (1936) (prior to July 1, 2016), of which Plaintiff, and other former and current member-owners and ratepayers of the cooperative, are members of the class the statute seeks to protect, as are the damages.

96. As a direct and proximate cause of the aforementioned violation of Miss. Code Ann. § 77-5-235 (1936), Plaintiff, and other member-owners and ratepayers of the cooperative, current and former, are entitled to their proportionate share of the aforementioned \$149,643,679 in excess earnings.

DECLARATORY JUDGMENT

97. Plaintiff, pursuant to Miss. R. Civ. P. 57(b), hereby seeks a declaratory judgment that if one member-ratepayer is owed a return or rebate pursuant to Miss. Code Ann. § 77-5-235 based on the facts and law as alleged herein, then Singing River Electric Cooperative must also provide returns and/or rebates to other member-ratepayers in the same class—and that failure to do same would result in prohibited rate discrimination as pronounced by the Mississippi Supreme Court in *The Door Shop, Inc. v. Alcorn County Electric Power Association*, 2017-CA-00956-SCT, 2018 WL 5839172, at *6 (Miss. Nov. 8, 2018).

PUNITIVE DAMAGES

98. Plaintiff reserves the right to amend this complaint to seek punitive damages, to the extent that discovery supports a claim for such damages.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for the following relief against Singing River Electric Cooperative:

1. A Judgment for compensatory damages to Plaintiff, and/or other similarly-situated member-owners and ratepayers, current and former, in an amount equal to their proportionate share of the accumulated excess revenues and receipts of the cooperative that are not necessary for reasonable working reserves;

2. An Order enjoining Singing River Electric Cooperative to remit to Plaintiff, and/or other similarly-situated member-owners and ratepayers, current and former, their proportionate share of the aforementioned \$149,643,679 in excess earnings;

3. An Order establishing a constructive or statutory trust to hold all remaining excess earnings (i.e., “excess revenues,” “margins,” “retained earnings,” or any other terms used by Twin County Electric Power Association to mask retained revenues and/or receipts that are not reasonably necessary for operating and maintenance expenses, associated debt obligations, and/or reasonable working reserves) owed to the other member-ratepayers so as to not perpetuate “rate discrimination” as recently pronounced by the Mississippi Supreme Court in *The Door Shop, Inc. v. Alcorn County Electric Power Association*, 2017-CA-00956-SCT, 2018 WL 5839172, at *6 (Miss. Nov. 8, 2018);

4. A Declaratory Judgment that if one member-ratepayer is owed a refund or rebate pursuant to Miss. Code Ann. § 77-5-235 based on the facts as alleged herein, then Singing River

Electric must also provide returns and/or rebates to other member-ratepayers in the same class—and that failure to do same would result in prohibited rate discrimination as pronounced by the Mississippi Supreme Court in *The Door Shop, Inc. v. Alcorn County Electric Power Association*, 2017-CA-00956-SCT, 2018 WL 5839172, at *6 (Miss. Nov. 8, 2018);

5. An Order awarding Plaintiff the costs of prosecuting this action, including reasonable attorneys' fees, expert fees and costs reasonably incurred for his efforts to have money held in trust and/or otherwise returned to member-owners;

6. An Order directing Singing River Electric Cooperative to provide an accounting of all accounts held by current and former members, deceased or living; and/or

7. Granting such other relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this the 25th day of March, 2019.

/s/ Brannon L. Berry
Brannon L. Berry, MSB# 104811
One of the attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I, Brannon L. Berry, do hereby certify that I have electronically filed the foregoing pleading with the Clerk of the Court using the MEC filing system, which sent notification of such filing to all counsel of record on this the 25th day of March, 2019.

/s/ Brannon L. Berry

Brannon L. Berry, MSB# 104811

AN ATTORNEY FOR PLAINTIFF

Mississippi Electronic Courts
Nineteenth Circuit Court District (Jackson Circuit Court)
CIVIL DOCKET FOR CASE #: 30CI1:19-cv-00051-RK

BARIA v. SINGING RIVER ELECTRIC COOPERATIVE
Assigned to: Robert P. Krebs

Date Filed: 03/22/2019

Current Days Pending: 27

Total Case Age: 27

Jury Demand: Plaintiff

Nature of Suit: 62 Other Statutes/Rules

Upcoming Settings:
None Found

Plaintiff

BARRETT BARIA

represented by **Brannon Berry**

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

**SINGING RIVER ELECTRIC
COOPERATIVE**

11187 HIGHWAY 63 SOUTH

P.O. BOX 767

LUCEDALE, MS 39452

also known as

**SINGING RIVER ELECTRIC POWER
ASSOCIATION**

Date Filed	#	Docket Text

03/22/2019	<u>1</u>	Civil Cover Sheet. (Gambrell, Haley) (Entered: 03/22/2019)
03/22/2019	<u>2</u>	COMPLAINT against SINGING RIVER ELECTRIC COOPERATIVE, filed by BARRETT BARIA. (Gambrell, Haley) (Entered: 03/22/2019)
03/22/2019	<u>3</u>	SUMMONS Issued to SINGING RIVER ELECTRIC COOPERATIVE. (Gambrell, Haley) (Entered: 03/22/2019)
03/25/2019	<u>4</u>	First AMENDED COMPLAINT against SINGING RIVER ELECTRIC COOPERATIVE, filed by BARRETT BARIA. (Berry, Brannon) (Entered: 03/25/2019)

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